Eminent Domain Task Force Meeting
September 29, 2005
State Capitol Hearing Room 7

The Eminent Domain Task Force meeting was called to order at 10:10 by Chairman Terry Jarrett.

Task force members present were: Terry Jarrett, Chris Goodson, Gerard Carmody, Senator Chuck Gross, Representative Steve Hobbs, Spencer Thomson, Lewis Mills and Howard Wright. Also present were Sherry Fisher, Brian Grace and Chris Roark.

Minutes of the September 15, 2005 meeting were reviewed. Howard Wright made the motion to approve the minutes, seconded by Gerald Carmody. Minutes approved for posting.

Expert guests in the area of Eminent Domain were invited to address the task force and answer questions. The first speaker was Professor Dale Witman an expert on property law and the author of several textbooks on property law. He currently teaches property, real estate finance and land use planning at the University of Missouri-Columbia School of Law.

He spoke of the application of the public use concept in situations where an eminent domain taking results in the property being placed in private hands. That is the fundamental issue in the Kelo case and the motivating force behind the creation of the task force. In the 19 century the eminent domain power was widely given by states to railroads, mills and lots of other private enterprises. In these situations usually the government didn't even bring the eminent domain action. The private entity, the railroad for example, could condemn directly. The public was benefited in a sense by these projects but the government didn't condemn the property and didn't end use the property directly. The Supreme Court upheld this use of the eminent domain power in a mining company in 1906. That case involved a mining company that wanted to condemn property for an aerial bucket line on some property that was privately owned. They did condemn it under state law and the Supreme Court upheld that that was alright. In doing so what the Supreme Court did was to take the term "public use" as it appears in the Fifth Amendment and redefine that as "public purpose". The next significant case wasn't until 50 years later in 1954. It involved the redevelopment agency that was doing the urban renewal in the southwest Washington area. The redevelopment agency operating under the urban renewal program created by Congress in the early 1950's was purchasing slums, consolidating the property and turning it over to private developers. The question was whether it was public use and the court said that it was public use being defined as a public purpose, the public purpose being the elimination of slum and blighted properties. The court continued to follow on this same trend of not being very concerned that the property would end up in private hands. The next case 30 years later was in Hawaii and it involved land that had been retained by trust created by the original missionary families when they had settled Hawaii and acquired the real estate title. The trust would lease this property to homeowners on long-term leases rather than outright selling it, typically 99 year leases. The legislature in Hawaii decided it would be desirable to allow people to acquire the title to their houses by paying the trust the value of their reversionary interest. The Supreme Court ultimately upheld that. There was nothing physically wrong in the sense of being

slum or blighted with the properties involved. The description that Justice Stevens gave in the Kelo case when he said that the court concluded that the state's purpose of eliminating the social and economic evil of the land oligopoly qualified as public use. The public purpose that the city asserted there was the reunification of the city's economy and its tax base. A sentence from Justice Steven's opinion: "promoting economic development is a traditional and long accepted function of government, there is moreover no principled way of distinguishing economic development from the other public purposes that we recognize." He concluded that there was a sufficient public purpose in the economic rejuvenation in the city of New London. One of the things the court refused to do in the Kelo case was to second guess the city's judgment that the project would indeed promote the city's economy. The procedure that the city had used was number of public hearings were held, economic studies, consultants… he felt that they had gone far beyond what they would need to do in establishing that the public purpose was real and legitimate.

Professor Witman stated that it would be helpful to have statutory standards that the state and local government agencies have to follow when they take property that is to be turned over to private ownership. The standards would include procedures to be followed, such as requiring the agency to give a clear statement of the public benefits that are sought to be achieved, have public hearings so that public input can be made, findings of fact that the public benefits would indeed be achieved and an estimate of the value of the public benefits if those benefits are financial in nature. These standards would form the basis for judicial review so that if an agency would ahead with the taking without satisfying the standards their actions could be appealed to the courts and ultimately could be set aside.

Questions:

Q: Do you consider the Kelo decision to be a radical departure from previous Supreme Court decisions?
A: No, it is in a way a very incremental step, although it is a step in the sense that the previous decisions have all involved property that there was a problem with and here there is no problem with the property being taken.

Q: In the Missouri Constitution, Article 1, section 28 there is a statement about the review by the courts that says: "the question whether the contemplated use be public shall be judicially determined without regard to any legislative declaration that the use is public". For some reason that section seems to have been overlooked or been interpreted in such a way that doesn't seem to have a lot of meaning in terms of the current review by the courts. Is there anything that you could enlighten us on the court interpretations of that section and how we got away from it or maybe we never got there?
A: I think it is fair to say when you read the Missouri Supreme Court and Court of Appeals' decisions in cases involving public use standard that they have been very willing to concede to the determinations of the agency that is doing the condemnation. They have not been at all eager to insert themselves into that equation and to slow down the local agency. It seems that it is highly proper for the court to have the final review power. I don't think that that provision of the constitution would be read to mean that there cannot be legislatively determined standards for agencies to follow.

Q: Assuming that the general assembly wants to deal with this issue, a question has arisen as to whether or not the general assembly has the complete power to deal with this issue of eminent domain. Is there anything in the constitution that needs to be amended to take away those powers or is the power to changes in the hands of the general assembly?
A: To my knowledge, there is nothing in the constitution that would need to be changed in order to give the legislature a clear path to make statutory changes.
Q: I'm intrigued by your analysis of the Supreme Court cases and particularly the distinguishing feature that Justice O'Connor looked to and the prior cases against the Connecticut case and that was the use of the properties and their condition prior to the taking. It has also been pointed out to this task force that the Connecticut legislation at issue in that case differed somewhat from the legislation in Missouri that would permit a taking of this nature to the extent that a precondition to a take of that nature in Missouri would require a finding of blight or a conservation area in Connecticut that wasn't necessary. Do you think that being the case in Missouri, that if the Missouri standard had been applied in Kelo, would Justice O'Connor and other dissenters had been in the majority rather than the minority because of that finding?
A: If the Connecticut legislation had not permitted a taking purely for economic development purposes, then as a matter of Connecticut state law, not a matter of interpreting the fifth amendment of the constitution, the courts in Connecticut would have stricken down the intent to take. It is a complicated thing to do because we have legislation that deals with state agencies, with cities, with counties and with redevelopment agencies. I will take as truth, although I haven't checked it for myself, that absence of blight or conservation area, the eminent domain power simply would not be available to a redevelopment agency in this state.

Q: One of the purposes of this commission is to try to improve the process of eminent domain. You mentioned some statutory standards as suggestions; clear statement of benefit, public hearing, finding of facts and value benefit of the project. Do you have any insight or recommendations on what kind of a tool we could use to see if a project is beneficial? What I mean is if it creates two jobs or 250 jobs to the area, both are subjective. How can we implement that into the eminent domain process that municipalities and developers can look at it and see where that line is crossed to become a good project for the community?
A: I have to tell you that even though I have thought a good deal about it, I have despaired of finding an answer. It seems to me that ultimately you have to leave that decision in the first instance to the condemning agency and in the second instance to the courts to determine whether this is simply a bad faith possibility or whether it is supported by substantial evidence and is found in good faith in which I think the courts would have to uphold it.

Q: If you think eminent domain uses for economic development purposes is something that should be allowed and if we are not going to change the definition of blight, and that may be from what I've heard one of the few safeguards we have in Missouri to protect us from Kelo, then what else is there?
A: I don't think Kelo is a decision we need protecting from. If I had been on the court I would have voted with the majority. I don't think that the Connecticut legislation is out of order. If there is a legitimate established economic development objective, I don't find any difficulty in accepting that.

The next two presenters are Greg Smith, attorney with Husch & Eppenberger in St. Louis and Jim Koman, president of Koman Properties in St. Louis.

Greg has been an attorney for twenty five years and has acquired property over the course of the years and has condemned hundreds and hundreds of parcels and has tried cases to juries. He was the chairman of the Missouri Bar Eminent Domain committee for 4 years. He represents primarily developers in a variety of different contexts but he has also represented municipalities, most recently represented the city of St. Louis with regard to the development of the new Cardinal Ball Park. What he does most of is redevelopment for commercial and retail purposes. He will focus on case study in St. Louis County. St. Louis County is a county of 524 square miles with a population of just over a million people, which is about 1/5 of our state. There are 91 municipalities within St. Louis County. It is a mature county, in the last census it only grew by 1.6 percent, which is about 15,000 to 16,000 people over ten years. It is not an expanding county in terms of population but is a very stable county. He has done projects all over St. Louis County and feels it is a vital tool if St. Louis County and our urban counties are to survive. Eminent domain is an extremely inefficient way to buy ground. No one wants to use eminent domain as a way to get a better price for property and anyone who has ever condemned property will tell you that. From a different perspective, it is inefficient because it introduces the two greatest variables that are the death of commercial development. It creates uncertainty as to price and it creates uncertainty as to timing. The process of eminent domain in Missouri can take as long as a year or more to get a final valuation out of the jury and then you have the possibility of the appellate process. There are opportunities along the way to take title at a sooner time but that creates a significant risk as to price to be paid for the ground. The developer trying to bring a project into creation on a predictable time frame so he can meet demands is very challenging. It is inefficient and it is used rarely. In the course of his 25-year career, he only tried to a conclusion 12 or 13 condemnation cases. His rule of thumb is that 95% of the parcels in a development will be acquired by negotiation and 5% may have to be subjected to a threat or ultimately condemnation and of that 5% of those will ever get tried.

Mr. Smith then gave a power presentation regarding a development project in the city of Brentwood. In the mid-90's the city of Brentwood changed its comprehensive planning and identifying the need as all municipalities must to continue to generate sales tax revenues to support its governmental functions, it knew that it only had a certain number of areas in the city within which it could redevelop the properties and continue to create the sales taxes which this state demands municipalities use to finance its municipal government. With this development they were able to attract to the community users that they could not attract with their existing type of commercial areas. They were able to bring in national retailers. They eliminated all the blighted conditions that were impeding the commercial center.

Mr. Smith realizes there are problems associated with the abuse of eminent domain and he doesn't think there will ever be a process where there won't be some abuse of it, but he has a different view of where the focus should be. He believes that historical use of eminent domain has been critical for our country whether it is for railroads, mills, mining in the early formation of modern twentieth century government in urban areas. There are going to be individual property owners who property rights are going to have to give way for a greater public good, in this instance the elimination of blight and creation of economic revenue to run government. That

person should be compensated fairly and I think we should minimize the inconvenience to that person. The focus should be that the property owner gets compensated well, that they are entitled to relocation benefits, they have predictability of timing in terms of how they are asked to vacate their property and the focus should be on that individual because they are definitely inconvenienced. If we did that I think we would continue to serve important functions of government and infrastructure and maybe address some of the outcry that exists today.

Q: You have 78 parcels; you are able to get 76 of those parcels in the fold so to speak without controversy. You have two hold-outs. That is one extreme. The other extreme is where you have 2 that one to do it and 76 who don't. The difficulty that we have is that all of the benefits that you were talking about are the same whether you have 76 in the fold or 2 in the fold with respect to that project with respect to the ultimate obsolescence or existing obsolescence of that shopping center. What is it that you do when you have two that say we want to do it and 76 don't or if you have half that say they want to do it and half that don't? I think those are the difficult situations, although the benefits are going to be the same regardless of whether you have the proponents or not. How do you deal with the situation where you have the 50-50's?
A: That is theoretically possible; however I have never been in that situation. There is too much uncertainty, there is too much time, there is too much process and no developer that I have ever worked with would go to that length.

Q: There are 91 municipalities in St. Louis County. Each of those municipalities by virtue of chapter 99 is empowered with the ability to approve a development plan and allow the use of eminent domain, right?
A: Yes.

Q: How do you deal with the tension of the municipalities who want to jump on the band wagon too and be competitive with the other municipalities and how do we control the legislative body, some of who may not have the level of sophistication as Brentwood or have the great city administrators who we find in places like Maplewood. How do we take care of that?
A: The perception is either you use eminent domain or the incentives. If those incentives are that the power of eminent domain for a redevelopment tool is what is creating the competition is to the contrary. What creates this competition is the fact that our form of government permits incorporation of municipalities and we then force those municipalities to finance their governments with sales tax. There are only two alternatives; real property taxes or sales tax. If you can't generate sales tax in a municipality, you are going to have to propose a real property tax on your citizens. The alternative is to create sales tax in your community. If you can eliminate all these incentives, you can eliminate the power of eminent domain and municipalities will still compete for my clients to come to their communities so that they can have the sales tax. The only answer is to eliminate those municipalities. There would need to be a consolidation of municipalities and it has been discussed.

Q: What do you typically see as an average of a hold-out?
A: You will acquire 95% of the property by negotiation in most instances.

Q: Do you see low-balling offers and if so do we need to implement some sort of measure to prevent that?

A: No, in the project I am speaking of they were paid $30 a square foot. It doesn't make sense to low-ball because you are going to pay more in eminent domain through the volatility of the jury.

Q: Rather than have the developer handle the whole process, let the municipality handle the process. The developer would obviously have to fund it, but what are some of your comments on letting the municipalities handle the whole process and letting the developer fund it?
A: That is technically what is required and takes place on a technical legal basis in all contacts of redevelopment other than the use of chapter 353.

Q: It seems this project that you describe is very family to what is going on in Sunset Hills. What went right here and what is going wrong in Sunset Hills? How do we address the problems in Sunset Hills? It is much closer to middle ground as who is opposed and who is for the project. There are all indications that it is going to collapse under its own weight. Nonetheless, it seems there is an over-enthusiastic developer apparently and an overly gullible city government apparently and between those two they put a lot of people in a long-standing state of uncertainty about their property.
A: The political process has to work and I don't understand why in response to the level of political opposition that exists in Sunset Hills, I can't explain it. I can't explain why there wasn't prior to the initiation of any kind of eminent domain a more successful negotiation with property owners and probably more important why the community and the developer how they could figure out the economics for that project to succeed, given the lack of success in tying up those properties. I don't know how that project is going to succeed. If the project does not succeed, the reasons that we have placed most of the decisions with the local government is because they are subject to voters and I would venture to say that you will see a very significant backlash at the polls, which is where it should take place. I think the Texas law and the Alabama law could be modified and could be adopted by this state along with some additional procedural protection and more importantly some additional benefits for the property owner who is being inconvenienced.

Q: Are you capable of giving the committee some suggestions to the committee? We would like to hear specific changes you would suggest making.
A: I will be happy to do that.

Hopefully we all recognize as our constitution does, that reclamation and redevelopment of blighted areas is just as important to our urban areas as building roads across the rest of our state.

Q: In the case of Sunset Hills, the political pressure being what they were, if the financing had been solid to support the cost of going after the 25% of the parcels that did not want to settle, that would still be a project on the floor, right?
A: It is impossible. A financing commitment for a project like that will have 25 different conditions to funding. Those conditions would include assemblage of a certain percentage of the ground. The bank is going to insist on site control, tenant commitments which are contingent upon delivery of the site at a specific time and the bank will insist on validity to the assistance. It all boils down to the economics of the situation and good bankers are not going to take a risk.

Q: The officials are accountable to the voters. The municipality itself should be the only entity that has the power of eminent domain because they are the most responsible to the voters. In your experience in dealing with different governmental municipalities, what is your insight to removing or restricting power from private water districts, sewer districts, libraries, fire stations, etc.?
A: Those types of condemnors are very inactive. You can only build so many libraries, so many schools, so the instance of abuse is so diminished that is isn't an issue. There does need to be accountability.

Q: In listening to the Sunset Hills testimony it struck me that the property owners could not talk to the public officials. If the developer was doing things that were improper, there were not checks or balances. The proper relationship is that the city should control the developer and make sure the developer is responsible to the agreement. I'm curious about your reaction to some legislative requirement that the city retain control of that acquisition process.
A: Most of the redevelopment agreements that I am involved with today specifically obligate the developer to acquire the property by negotiative purchase and then before there will be any eminent domain initiated, the property owner brings the history of negotiations to the municipality and the municipality must then make its own offer before there is any initiation of eminent domain. Typically the developer cannot proceed in the name of the municipality until the municipality has forced him to try and do it independently and then if that has been unsuccessful, then the municipality will make a separate offer that has to be a good faith offer before there can be condemnation proceedings. There is a legislative process in chapter 353 stating that no corporation can receive eminent domain unless the municipal government has authorized eminent domain. It is a very dangerous thing to make policy because of the exception.

Q: Do you also do developments where you are not working with a municipality and condemnation is not an issue.
A: Absolutely.

Q: Could you please explain the process you go through there and then in turn explain to me the process where you are working in a redevelopment issue where condemnation is an option.
A: The process is very similar particularly since you always have zoning. There is a governmental process. First of all there is a tenant process. Then there is an acquisition process. You have to go through a zoning process. You have to get your permit, you have to get your financing, you have to get your contracts lined up, you have to make sure your contracts stay open and then of course there is ultimately a closing.

Q: When you are working through a redevelopment issue and you have acquired 75 or 80% of the property within the tract that you are looking for redevelopment and the other percentage of the landowners are unwilling to sell. At what stage of that have you already acquired your financing for the project so that the lender who is working with you knows what figure you are using for land acquisition or do you have to use the condemnation process before you get your final approval on your financing?
A: The difference in a situation where you have to use eminent domain or you don't is you are always going to have multiple parcels in the context of eminent domain. Typically what

happens, when the area is identified and you go in and secure the parcels and the extent that there are remnant parcels that are necessary for development that are situated within it, then you have to approach those property owners and if they are unwilling to sell, you have to make a decision whether you can go forward with the project. In all of these instances where you don't have someone under contract so therefore you haven't quantified your land acquisition cost, you are going to make an assumption and suggest that to your lender. Most lenders will make a commitment to finance but there will be conditions to funding.

Steve Hobbs has had many comments to his office that people are disconcerted that we had public comment period and public testimony and now we have the "legal eagles" coming in at a special time where they can testify and he wanted to make it know to the task force. As far as the constitutional portion that was voted on in 1945, Senator Gross and Rep. Hobbs have been involved in a couple of changes to the constitution and things are different now than they were in 1945 and as long as the people have the opportunity to vote on the issue, they will make the right decisions, but I think what we have to remember is that we keep hearing talk about the rising tide floats all boats higher and that is a good saying. We just have to remember that everybody has to be in the boat and unfortunately in some of our urban areas, if you don't make enough money, if you are not in the right tax bracket, you are not wanted. There is a great amount of concern among people around the state. It is our job as a task force to find out what those answers are and to educate ourselves and the public on what is really happening.

Q: To the extent that you think the focus needs to be on compensation and the concept of just compensation. We know that the law in Missouri is that you cannot be compensated for lost profits in connection with the condemnation proceeding. Would it be your sense that compensation for lost profits should be part of the just compensation process?
A: I believe that in certain instances you can recover loss of profits. My point being that you have to demonstrate that there has been a taking of the business. If there is a destruction of the business, you are entitled to recover for destroyed property. That maybe needs to be better articulated.

The next speaker was Jim Koman, president of Koman Properties a real estate development firm based in St. Louis County.

Jim has been a real estate developer for 22 years and is involved in a number of associations. He is a bi-state developer throughout the state and in Illinois. He wanted to give an idea of how tough it is to develop in the urban marketplace. One of his company's basic development policies is to try to bring retail back to the inner city. Koman Properties has been successful in developing in the city of East St. Louis. Some of the obstacles and challenges that they have had to overcome is that the reality of doing business in the inner city is much different than it is in other parts of the metropolitan areas. The lack of firm commitments from a lot of the big retailers for the inner city is a big problem. Financing is tough because most banks do not want to lend to inner city projects. They ask for more equity, higher personal guarantees, they have higher interest rate vs. suburban developments, they also have lower loan to value which makes you have to put in more equity to try to make this project a success. The use of TIF grants, added business taxes and subsidies incentives has been and will be an extremely important part of the inner city development process. Because of all the added costs, these development tools

are critical to make these projects work. The inner city at this time is in decay and disrepair and that is true for a lot of areas in the urban core. There are a lot of dilapidated buildings that need to be removed. Eminent domain clearly provides for opportunity. I believe that if we have to rebuild our inner cities across America, we should start with rebuilding the base in these inner cities allowing people the opportunity to shop in their own neighborhoods. Without eminent domain blighted areas will remain blighted. It will remain undeveloped which will mean fewer services, less jobs and more poverty in the inner city.

Jim then did a power point presentation on a development project at the intersection of N. Grand Avenue, Page Avenue and Martin Luther King Boulevard.

Q: You mentioned that people want to live around areas that have retail and commercial development. Are you seeing that in this immediate area?
A: Yes, a Walgreen's is now going in and we did a housing study and it has almost tripled.

Q: Low-ball offers? When you go in do you offer more than the assessed value when you start it or have you seen low-ball offers?
A: We start high and we go higher because time is of the essence.

Q: Time limit? We have had several people testify that they have been hanging under the cloud of eminent domain for years. Do you have a number in mind or do you think you can only use eminent domain for an x number of years?
A: I do put sunset provisions in my development agreement. I believe everyone deserves a fair chance. If you can't get it done in three to five years, you shouldn't be in the business.

Q: We have looked at many ideas on how to address compensation and the procedural portion of use of eminent domain where we have a firm definition of public use. Are you in support of trying to bring more continuity to that process and have guidelines in place on how the process is going to work every time?
A: I think with the compensation I would be happy to say get two or three appraisals and then take some percentage of that and make an agreement so you can continue with the project.

Chairman Jarrett asked the panelists to feel free to share any subsequent ideas or suggestions they may have.

The next panelist was Stephen Anderson, Castle Coalition Coordinator, Institute for Justice in Washington, DC

History of Eminent Domain

- The power of eminent domain is awesome, so awesome that in the early days of this country, the US Supreme Court described it as "the despotic power". Quite simply, it is the power to remove residents from their long-time homes and destroy small family business. In order to protect property owners, the Fifth Amendment to the US Constitution provides "Nor shall private property be taken for public use, without just compensation."

- The drafters of the Missouri constitution went even farther in protecting property owners. The Missouri Bill of Rights, Article I, Section 28 provides that "private property shall not be taken for private use with or without compensation, unless by consent of the owner." And, to the extent a legislative body, typically a local council or commission, declares that a use is public and not private, Section 28 further provides that "the question whether the contemplated use by public shall be judicially determined without regard to any legislative declaration that the use is public.
- The true heart of the issue is public use. Historically, public use meant things actually owned and used by the public – roads, courthouses and post offices. The notion of pubic use has expanded to the point that the public use restriction is really no restriction at all. Property is routinely transferred from one person to another in order to build luxury condominiums and big-box stores. Abuse is happening in Missouri.

Missouri is one of the worst abusers of eminent domain in the nation.

Despite the protections uniquely provided by the Missouri constitution, this state's judiciary has abdicated its role, routinely affirming condemnations for private use. Missouri is the only state in the nation that allows a developer to condemn property.

The abuse of eminent domain was made possible by Missouri's current definition of blight. The most common way cities in Missouri make this change is to call it "blight removal". Urban renewal, as "blight removal" is often called was given ultimate approval in 1954 by the Supreme Court in Berman vs. Parker. Over the last 50 years, "blight removal" has come to mean everything but the common sense meaning of the phrase. What started as a way to remove dilapidated, vermin-infested properties has been perverted into the ability to take away perfect fine middle and working class neighborhoods like those in Sunset Hills, to give a private developer promising increased tax revenues and jobs. Statutes are vague and definitions of blight that literally that any property can be considered blighted are can be subject to be taken away.

The Supreme Court in Kelo completed the erosion of rights guarantees under the Fifth Amendment. As a result of this decision, every home, every church and every small business is now up for grabs to the highest bidder. Eminent domain remains a benefit for those with money and connections.

Suggestions:

- Independent legislation strictly prohibiting eminent domain to pure, historic public uses would be an important step. Eminent domain should only be used in those situations where the general public, public agencies or public utilities will ultimately use or own the property.
- Legislature can explicitly prohibit private to private transfers of property for economic development to increase tax revenue, tax base, employment or general economic health, when that activity does not result in (1) the transfer of land to public ownership (2) the transfer of land to a private entity that is a common carrier such as a railroad or utility, (3) the transfer of property to a private entity when eminent domain will remove a threat to

public health or safety or (4) the lease of property to private entities that occupy an incidental area within a public project.

- Reform the way courts define public use by reaffirming the constitutional requirement that any determination of a public use by made by the courts.

Eminent domain abuse affects real people. Missouri has a historic opportunity to reverse years of exploitation and misuse of eminent domain power.

Reference Pennsylvania statute 17.12.1, which contains several good criteria for finding blight. Mr. Anderson will provide additional information and recommendations on blight to the task force.

Next was a panel presentation from John Brencaglioni, Architect Firm from St. Louis; Steve Smith, President and Principal of Lawrence Group, St. Louis; and Marty Corcoran, City Administrator City of Maplewood

Steve Smith gave his experiences of eminent domain use. He fundamentally encourages re-development. As communities age, what can be done to revitalize these communities. Redevelopment is more complex. Need to have comprehensive plan that gives confidence in future. Second, have ability to assembly land. Without eminent domain any individual can veto a project. Third, rights that are given to individuals. Eminent domain used properly will foster re-development and allow communities to revitalize.

Marty Corcoran stated that over the time the economy in Maplewood had declined and retailers had packed their bags and relocated to the regional malls. The community lost is economic base. Developer came along and proposed a development that would bring in major retailers and government supported but public did not. Proposed development did not occur and city continued to decline. Six new development projects have implemented, two have failed. The failed projects were because the public did not think they were needed. Sunset Hills is exception. In only two of the six projects did the city use eminent domain. In one of the projects 159 parcels were used and in only 5 of the parcels was eminent domain used. Most of the incentives were over the appraised value of the property. Developers in all cases did not try to low ball. The use of eminent domain is always a threat. Maplewood today is an up and coming place to live. Redevelopment was critical and eminent domain was a tool used. Law is not perfect but don't throw out baby with bath water.

John Brencaglioni stated that we need to understand how some of the projects come to pass and then offer up suggestions to get things under control. Not all situations are developer or municipality driven. Some projects are undertaken at the request of the neighborhoods or citizens of the community. Citizens found developer and then dumped project in city halls lap. City did not initiate project, the neighborhood did. Large majority of the neighborhoods must demonstrate that they want the development to occur. Recommendations from Sunset Hills scenario:

- City did everything right and reacted to citizens concerns
- Area did not quality for a blighted area. Suggest that the task force not mess with the definition of blight. Look at how Illinois defines blight in their TIF statutes.

- Look at establishing procedures for mediation issue – before eminent domain proceeding could be filed. Panel reviews the material before it goes to the actual court proceeding.
- Cities should know, and developers should disclose, all of the contingencies of financing.
- Definition of blight in Webster's dictionary "something that frustrates ones plans or withers ones hopes"

Senator Gross recognized John Brencaglioni's expertise on TIF issues and invited him to assist Sen. Griesheimer's committee on TIF reform.

In many instances developer goes in before an RFP has been initiated and don't inform the people of what their rights are. In many instances residents form waiver and then don't have any relocation benefits paid to them. Option contacts are not binding contracts – take a closer look at these.

Referendum in Maplewood – no referendum in Sunset Hills. Greater acceptance potentially. Should task force consider some form of referendum in terms of all the people within that municipality voting on the development.

Two of three panelists said this would not be a good idea. Maplewood used referendum and it worked good because of the size of the municipality. If the information people receive is not good, facts have to be delivered without embellishment, voting on emotional basis nor rational basis. Size of municipality would be a concern. Cost may be issue.

Maplewood now has provisions where they are limiting eminent domain.

Jeffrey Kaczmarek said that ECD is a not-for-profit staff and provide staff to the Tax Increment Financial Commission, Land Clearance for Redevelopment Authority and the Port Authority.

Eminent domain provisions are used in a very conservative manner and have policies and procedures in place for the usage and are not used for taking of Greenfield sites/farmland for the most part. Eminent domain should be used as a tool of last resort. In Kansas City eminent domain is used mainly in the urban core area. Eminent domain is mainly used where there are multiple ownership interests and where clean titles are not available.

In Kansas City procedures are used. First developers are required to make a market rate offer to the landowner before requesting use of condemnation. Second, statutory authority makes a market rate offer (the value is determined by independent appraisals) to the landowner before filing for condemnation. Third, landowners are provided real estate services to find alternate sites. Work with them to show them different sights. Fourth, agencies are required to pay relocation expenses and fifth, if the offer is rejected condemnation is filed.

If eminent domain were not available as a tool, what is classified as the "rebirth" of Kansas City would not have occurred. Self interest vs. social good. Self interest impedes downtown revitalization. Definition of blight should be looked at very closely. Showed pictures of what

was on site before the H&R Block started building. Submitted letter from Swope Community Builders, the only minority-led developer in the State of Missouri to be a designated TIF developer. Fact is that without the ability of local government to use eminent domain, critically needed new investments would not occur.

Lots of states are watching Missouri with regard to legislation on the subject of eminent domain.

Steve Taylor stated that eminent domain is a very difficult and complicated subject. Subject that is emotional because it deals with property rights but is a tool. Without the use of eminent domain as a tool redevelopments in downtown areas would not be possible. Must be used sparingly and as a last resort.

Terry Jarrett discussed preliminary considerations packet for presentation to Governor by October 1st.

Discussion among task force as to recommendations. Final report would have more input. Preliminary report is what has occurred so far and has been a fact findings mission. Some recommendations will have consensus, others will not have consensus and both sides should be given to Governor. Final report needs to identify the issues and state both sides. Be sure to add points made today by the different panels to the preliminary report.

Next meeting will be held on October 13th at 10:00 in Hearing Room 7. Meeting adjourned at 3:30 pm.